

1 JONATHAN ALLAN KLEIN (SBN 162071)
2 ANNMARIE M. LIERMANN (SBN 215116)
3 KELLY, HOCKEL & KLEIN P.C.
4 44 Montgomery Street, Suite 2500
San Francisco, CA 94104-4798
Tel.: (415) 951-0535
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5

6 Attorneys for Defendant
7 RITE AID CORPORATION

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY BEAGLE,

11 Case No.: CV08-1517-PJH

12 Plaintiff,

13 vs.
14 RITE AID CORPORATION; and DOES
1 TO 100, INCLUSIVE,
15 Defendants.

16 **DEFENDANT RITE AID'S REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION (FRCP 12(b)(1))**

17 Date: Wednesday, June 4, 2008

18 Time: 9:00 a.m.

19 Dept.: Courtroom 3, 17th Floor

20 Accompanying Documents:

21

22 1. Notice of Motion and Motion;
2. [Proposed] Order.

23 TO PLAINTIFF KIMBERLY BEAGLE AND HER ATTORNEYS OF RECORD:

24 Pursuant to Federal Rule of Evidence 201(d), Defendant Rite Aid
25 Corporation requests that the Court take judicial notice of the following
documents:

26 1. Plaintiff Kimberly Beagle's Complaint of Discrimination Under the
27 Provisions of the California Fair Employment and Housing Act, DFEH #
28 E200506 A-1323-00-s, filed by the California Department of Fair Employment

1 and Housing on June 9, 2006, a true and correct copy of which is attached
2 hereto as Exhibit 1;

3 2. Plaintiff Kimberly Beagle's Amended Complaint of Discrimination
4 Under the Provisions of the California Fair Employment and Housing Act,
5 DFEH # E200506 A-1323-00-s, filed by the California Department of Fair
6 Employment and Housing on February 7, 2007, a true and correct copy of
7 which is attached hereto as Exhibit 2;

8 3. Employment Discrimination Complaint in *Kimberly Beagle v. Rite*
9 *Aid Corporation*, Case No. CV-08-1517-PJH, filed in this Court on March 19,
10 2008, a true and correct copy of which is attached hereto as Exhibit 3.

11 DATED: April 24, 2008

KELLY, HOCKEL & KLEIN P.C.

13 /s/ Annmarie M. Liermann
14 JONATHAN ALLAN KLEIN
15 ANNMARIE M. LIERMANN
16 Attorneys for Defendant
17 RITE AID CORPORATION
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EXHIBIT 1

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # I.2005/6 A-1323-00-5

EEOC # N/A

If dupl-filed with EEOC, this form may be affected by the Privacy Act of 1974

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (Indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-1634

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

Rite Aid

ADDRESS

725 Fortuna Blvd.

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-9314

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

RACE SEX DISABILITY RELIGION NATIONAL ORIGIN/ANCESTRY DENIAL OF FAMILY/MEDICAL LEAVE SEXUAL ORIENTATION
 COLOR AGE MARITAL STATUS MEDICAL CONDITION (gender or genetic characteristics) OTHER (SPECIFY) _____

NO. OF EMPLOYEES/MEMBERS

50,000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

RESPONDENT CODE

TOOK PLACE (month, day, and year) 07/06/05

59

THE PARTICULARS ARE:

- I. During the course of my employment as a Sales Clerk at Rite Aide, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
 - A. From approximately February 1, 2005, to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
 - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH)
 - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
 - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he put his face between my legs.

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200506 A-1323-00-a

COMPLAINANT'S NAME(S) (Indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

EEOC # N/A

RESPONDENT'S NAME

Rite Aid

THE PARTICULARS ARE:

E. In July 2005, I reported the sexual harassment of Chris Young, to the Store Manager Leon Comerer.

Page 2 of 2

Typed and mailed for signature on 06/24/06

 I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 5-31-06At Colma

City

DFEH-300-01 (06/97) SF:TB:pw
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

COMPLAINANT'S SIGNATURE

DATE FILED: June 9, 2006

STATE OF CALIFORNIA

EXHIBIT 2

* * * EMPLOYMENT *

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200506A1323-00-s

EEOC # N/A

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

BEAGLE, KIMBERLY (MS.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-834-8091

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

RITE AID

ADDRESS

725 Fortuna Blvd

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-725-9314

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX[ES])

RACE SEX DISABILITY RELIGION NATIONAL ORIGIN/ANCESTRY DENIAL OF FAMILY/MEDICAL LEAVE SEXUAL ORIENTATION
 COLOR AGE MARITAL STATUS MEDICAL CONDITION (cancer or genetic characteristics) OTHER (SPECIFY) _____

NO. OF EMPLOYEES/MEMBERS
CODE

DATE MOST RECENT OR CONTINUING DISCRIMINATION

RESPONDENT

50,000

TOOK PLACE (month, day, and year) 07/06/05

59

THE PARTICULARS ARE:

AMENDED

- I. During the course of my employment as a Sales Clerk at Rite Aid, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
 - A. From approximately February 1, 2005 to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
 - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH).
 - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
 - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he shoved my head between his legs.
 - E. In July 2005, I reported the sexual harassment of Chris Young, to the store Manager Leon Comerer.

MAILED FOR SIGNATURE January 25, 2007

 I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 1-29-07

FEB 7-2007

K. Beagle

RECEIVED

At Fortuna

City

BY: SAN FRANCISCO DISTRICT OFFICE

BY: SAN FRANCISCO DISTRICT OFFICE

DFEH-300-01 (12/99)

SF:TB:pw

DATE FILED: June 9, 2006

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

AMENDED DATE: Feb 7, 2007 STATE OF CALIFORNIA

EXHIBIT 3

1 MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
 2 A Professional Corporation
 3 2453 Grand Canal Boulevard, Second Floor
 Stockton, California 95207-8253
 Telephone (209) 477-3833
 4 MARK S. ADAMS, ESQ.
 CA State Bar No. 78706
 DAVID D. CHENG, ESQ.
 CA State Bar No. 184760
 5 Attorneys for Plaintiff, Kimberly Beagle

ORIGINAL
 FILED
 MAR 19 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

PJH

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CV 08 1517

Case No.:

10 KIMBERLY BEAGLE,

11 Plaintiff,

12 vs.

13 RITE AID CORPORATION, a corporation;
 14 and DOES 1-100, inclusive,

15 Defendants.

EMPLOYMENT DISCRIMINATION
 COMPLAINT

1. SEXUAL HARASSMENT
2. DISABILITY HARASSMENT
3. SEX DISCRIMINATION
4. FAILURE TO PREVENT
 DISCRIMINATION & HARASSMENT
5. RETALIATION (FEHA)
6. WRONGFUL TERMINATION
7. RETALIATION (§ 1102.5)
8. ASSAULT
9. BATTERY
10. SEXUAL ASSAULT & BATTERY
11. INTENTIONAL INFILCTION OF
 EMOTIONAL DISTRESS
12. INVASION OF PRIVACY

20 JURY TRIAL DEMANDED

22 Plaintiff, KIMBERLY BEAGLE, brings this action against RITE AID CORPORATION,
 23 and Does 1-100 for general, compensatory, punitive, and statutory damages, costs and attorneys'
 24 fees, resulting from defendant's unlawful and tortuous conduct, as ground therefore alleges:

25 PARTIES

26 1. Plaintiff, KIMBERLY BEAGLE (hereinafter "BEAGLE") is an individual and
 27 was at all times relevant herein a resident of Humboldt County, California. BEAGLE is

1 currently a resident of Riverside County, California. At all times relevant hereto, BEAGLE was
2 employed in Humboldt County, California, a female, and an "employee" as defined by California
3 Government Code Section 12926.

4 2. BEAGLE is informed and believes and thereon alleges that Defendant, RITE AID
5 CORPORATION (hereinafter "RITE AID") is incorporated in the State of Delaware, maintains
6 its principle place of business in the State of Pennsylvania at 30 Hunter Lane, Camp Hill,
7 Pennsylvania 17011, is one of the nation's leading drugstore chains, operating more than 5,000
8 stores in 31 states, including the State of California, and the District of Columbia, and is the
9 largest drug store chain on the East Coast and the third largest drug store chain in the United
10 States. BEAGLE is informed and believes and thereon alleges that RITE AID is an "employer"
11 as defined by Government Code Sections 12926(d), 12940(a), and 12940(j)(4)(A). RITE AID
12 and Does 1-100 are referred to collectively as "Defendants."

13 3. This action is of a civil nature involving, exclusive of interest and costs, a sum in
14 excess of \$75,000. Every issue of law and fact in this action is wholly between citizens of
15 different states and/or a citizen of a foreign state.

16 4. The acts and omissions of Defendants alleged herein, except as otherwise noted,
17 occurred in Humboldt County, California.

18 5. BEAGLE is not aware of the true names and capacities of the Defendants sued
19 herein as Does 1 through 100, inclusive, whether individual, corporate, associate, or otherwise,
20 and therefore sues such Defendants by such fictitious names. BEAGLE will amend this
21 Complaint to allege their true names and capacities when ascertained. BEAGLE is informed and
22 believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible
23 in some manner for the occurrences herein alleged and that BEAGLE'S injuries and damages
24 herein alleged were legally caused by such Defendants. Unless otherwise indicated, each
25 Defendant was acting within the course and scope of said agency and/or employment, with the
26 knowledge and/or consent of said Co-Defendant.

27
28

6. BEAGLE is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURISDICTION

7. Venue is proper in this court, because the acts and omissions of Defendants alleged herein, except as otherwise noted, occurred in Humboldt County, California . Jurisdiction is proper pursuant to 28 U.S.C. Section 1332.

GENERAL ALLEGATIONS

8. BEAGLE, a female in her early forties (40's), began working for RITE AID on or about August 1998 as a Sales Clerk/Cashier at the RITE AID drug store located at 725 South Fortuna Blvd. in Fortuna, California. At the time of her termination, BEAGLE earned \$11.35 per hour.

9. BEAGLE is informed and believes and thereon alleges Chris Young became a RITE AID employee at the Fortuna, California store on or about 2000. Chris Young was promoted to Shift Supervisor on or about April 17, 2005. Chris Young was a "supervisor" within the meaning of California Government Code Section 12926(r), is the alleged harasser herein, and exercised substantial discretionary authority over significant aspects of RITE AID'S business before being fired by RITE AID on or about August 2005.

10. Within the first year that Chris Young began his employment with RITE AID, BEAGLE was subjected to Chris Young's lewd and derogatory sexual behavior and comments. BEAGLE also witnessed Chris Young checking out the attractive women, particularly those with large breasts or scantily clothed, that entered the store. While looking at the women, Chris

1 Young would widen his eyes and stare and in no way attempted to hide his sexual attraction and
2 excitement for such women. Chris Young later also remarked about having fantasies about
3 particular women that entered the store. Such conduct continued by Chris Young throughout
4 BEAGLE'S employment at RITE AID. Chris Young also discussed his sexual history, or lack
5 thereof with BEAGLE, often flexing his bicep and referring it to his "jack off muscle." While
6 flexing his self-declared "jack-off muscle" Chris Young told BEAGLE "I never get laid, this is
7 my jack off muscle" or words to that effect.

8 11. On one occasion, on or about April 2005, Chris Young took a piece of wood that
9 had come off a wood pallet and stuck it between his legs near his intimate area. While thrusting
10 the piece of wood towards BEAGLE, who was walking in the hallway towards her locker, Chris
11 Young stated, in a sexually derogatory manner, "Hey Kim, do you want some of my wood," or
12 words to that effect.

13 12. During her employ with RITE AID, BEAGLE complained to the Assistant
14 Manager, Leslie Pogh about Chris Young's behavior, including a complaint approximately six
15 months before Chris Young was promoted. BEAGLE also complained to Leslie Pogh about
16 Chris Young's behavior the same day that Chris Young thrust the wood pallet piece towards her
17 body. BEAGLE did not direct her complaints to the store manager, Leon Comerer, because she
18 feared that he would react angrily or retaliate against her, and it was the common practice in the
19 store to direct such complaints or concerns to Leslie Pogh.

20 12. Despite her complaints to Leslie Pogh, to the best of BEAGLE'S knowledge,
21 RITE AID did nothing to investigate BEAGLE'S claim, remedy the harassment, prevent further
22 harassment or retaliation, or discourage or discipline Chris Young for his actions. Rather, RITE
23 AID promoted Chris Young to a Shift Supervisor, and Chris Young's lewd and derogatory
24 behavior and comments continued, and escalated as set forth below on July 6, 2005.

25 13. On or about July 6, 2005, towards the end of her shift, BEAGLE was working in
26 the photo department of the RITE AID store in Fortuna, California. At that time, Chris Young
27 was also overseeing the photo department and noticed a young woman enter the store. Chris
28

1 Young then commented to Beagle that the young woman was "hot", that he had seen her and
2 friend come into the store before and that he had been having lesbian fantasies about them. The
3 young woman then proceeded to the photo department where BEAGLE assisted her. After the
4 transaction was complete, BEAGLE accidentally dropped her pen on the floor. While BEAGLE
5 was bent over picking up her pen, Chris Young positioned himself next to her and as BEAGLE
6 was returning to a standing position, Chris Young pushed BEAGLE'S head back down in
7 between his legs and into his intimate area. While pushing her head, Chris Young stated, "I like
8 you better down there," or words to that effect. BEAGLE was instantly offended by Chris
9 Young's actions and told Chris Young that he could not behave like that. BEAGLE then clocked
10 out to go home, as it was the end of her shift.

11 14. On or about July 8, 2005, BEAGLE returned to work for the first time after the
12 incident and immediately reported the July 6, 2005 incident concerning Chris Young to the Store
13 Manager, Leon Comerer. Despite her report, Leon Comerer did not take her complaint seriously.
14 Leon Comerer displayed his lack of concern by rolling his eyes and laughing as she told the
15 story. Before leaving Leon Comerer's office, BEAGLE told Leon Comerer that he needed to do
16 something about Chris Young. Leon Comerer, stated that he was leaving that day to go on
17 vacation and told BEAGLE, "You girls just gotta get to work." After Leon Comerer left for his
18 vacation at approximately 11:45 a.m., Chris Young reported to work at approximately 12:00 p.m.
19 After Chris Young's arrival, it soon became obvious to BEAGLE that no one at RITE AID had
20 addressed Chris Young about her complaint. Feeling uncomfortable working with Chris Young
21 and feeling a lack of support from RITE AID, BEAGLE informed Chris Young, the sole
22 supervisor on duty, that she could not work that day and she went home. The next day,
23 BEAGLE went to the doctor after being told by RITE AID supervisor, Cinda Hussey that despite
24 her complaint against Chris Young that RITE AID did not appear to be addressing, that she
25 needed a doctor's note in order to be excused from work. At the emergency room in Eureka,
26 BEAGLE was evaluated, diagnosed with neck strain and social strain, and was given a note to be
27 excused from work.

28

1 15. On or about July 9, 2005 while BEAGLE was undergoing treatment at the
2 emergency room, Chris Young's behavior as set forth above was reported to the Fortuna Police
3 Department.

4 16. After reporting the sexual harassment, RITE AID failed to take appropriate action
5 in sensitizing all concerned. RITE AID allowed rumors and hostility to develop in the Fortuna
6 and Eureka stores against BEAGLE. The Store Manager, Leon Comerer told other employees
7 and customers that he was terminated because of BEAGLE'S complaints of harassment. Store
8 employees also gossiped about the complaints of harassment, and soon BEAGLE'S complaint
9 was well known among her co-employees, as well as the residents of the small town of Fortuna.
10 Employees also blamed BEAGLE for complaining of sexual harassment and the firing of Leon
11 Comerer, as well as Chris Young. Because of the hostility, BEAGLE began to fear for own
12 safety when leaving her home and was anxious that she might see Leon Comerer or other store
13 employees. BEAGLE was terrified to return to work, as it was apparent that RITE AID had
14 taken a "blame the victim" approach to her complaints and/or failed to prevent such an approach
15 from developing among the employees and management.

16 17. As a result of the harassment and retaliation, BEAGLE was diagnosed with post
17 traumatic stress disorder, anxiety, depression, trouble sleeping, possible occasional panic attacks,
18 avoidance and feelings of abandonment; was prescribed medication; and put on medical leave by
19 her doctors. BEAGLE had her medical prescriptions filled at the RITE AID store in Fortuna.
20 Although she believed the information concerning the medications would remain confidential,
21 BEAGLE later learned that an employee in the pharmacy department told other non-pharmacy
22 RITE AID employees the type of medication that BEAGLE was taking. When she discovered
23 that the type of medication she was taking had become public knowledge among the employees
24 at the RITE AID store in Fortuna, BEAGLE complained to RITE AID about the disclosure of
25 this private information.

26 18. BEAGLE returned to the RITE AID store in Fortuna, California on or about
27 August 2005 to have her son drop off her doctor's notes to the supervisor on duty. BEAGLE
28

1 remained in the car to avoid any social distress involved in returning to the store and being put
2 into a position where she would have to confront Chris Young or other store employees. After
3 receiving the doctor's note, Cinda Hussey, the supervisor on duty, came out of the store and
4 confronted BEAGLE. Cinda Hussey accused BEAGLE of forging the doctor's signature and
5 thereafter crumpled up the doctor's note and threw it in BEAGLE'S face.

6 19. Because of the continued harassment and retaliation against her BEAGLE did not
7 return to work at the RITE AID store in Fortuna. Due to the hostile work environment at the
8 RITE AID store in Fortuna, and acting upon the advice of her union representative, BEAGLE
9 requested a transfer to the Eureka store. In response to her request to transfer, Human Resources
10 Manager, Steve Shipman told BEAGLE over the telephone that such a transfer would likely be
11 impossible because of seniority issues. BEAGLE never heard any other response to her request
12 to transfer until over a year later while BEAGLE'S claims, as set forth herein, were pending with
13 the California Department of Fair Employment and Housing (hereinafter "DFEH") and the
14 DFEH was trying to arrange a settlement. DFEH was unable to arrange a settlement and
15 thereafter closed their investigation of BEAGLE'S claims. RITE AID terminated BEAGLE on
16 or about April 2007, or approximately five days after the DFEH closed their investigation of
17 BEAGLE'S claims.

18 20. On June 9, 2006, BEAGLE filed a complaint of discrimination with the DFEH,
19 naming each of the above-named Defendants as respondents and/or in the body of the charge.
20 On February 7, 2007, BEAGLE filed an Amended complaint of discrimination, naming each of
21 the above-named Defendants as respondents and/or in the body of the charge with the DFEH.

22 21. On April 3, 2007, the DFEH issued BEAGLE a "Notice of Case Closure" that
23 operates as a "Right To Sue Notice" against each of the above-named Defendants. BEAGLE
24 filed this action within one year of the date of the "Right To Sue Notice" received from the
25 DFEH, and has, therefore, properly exhausted her administrative remedies.

26 22. On February 6, 2008 and March 5, 2008, BEAGLE served each of the foregoing
27 Defendants with a copy of the respective DFEH charges and respective "Notice of Case Closure"
28

1 via certified mail with return receipt requested. On June 22, 2006, the DFEH served a copy of
2 BEAGLE'S complaint of discrimination on RITE AID via certified mail with return receipt
3 requested. Since then, informal efforts to resolve this matter were unsuccessful and BEAGLE
4 was left no choice but to file this lawsuit to obtain appropriate redress.

5 23. The list of misconduct by RITE AID, its employees and/or agents and others
6 contained in the above allegations is a partial list only, and by way of example.

7 24. Since her termination from RITE AID, BEAGLE has suffered economic damages,
8 including loss of wages, loss of benefits, medical expenses and other past and future economic
9 damages. BEAGLE has suffered severe emotional distress and physical symptoms as a result of
10 this prolonged harassment, retaliation and termination of employment, such as fear, anxiety, loss
11 of sleep, weight loss, nightmares, depression, hopelessness, embarrassment, humiliation, loss of
12 self-esteem, among other things. As a further result of the wrongful acts of Defendants, and each
13 of them BEAGLE has been forced to hire attorneys to prosecute her claims herein, and has
14 incurred and is expected to incur attorneys' fees and costs in connection therewith.

15

16 **FIRST CAUSE OF ACTION**
17 **VIOLATION OF GOVERNMENT CODE § 12940(j)**
18 **(Sexual Harassment)**
19 **Against RITE AID and DOES 1-10**

20 25. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 24
21 above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 26. FEHA explicitly prohibits an employer or any other person from harassing an
24 employee on the basis of sex pursuant to Government Code Section 12940(j). FEHA, under
25 Government Code Section 12940 (j)(1), also provides that harassment by an employee, other
26 than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors knows or
27 should have known of the conduct and fails to take immediate and appropriate corrective action.

27. Defendant, RITE AID at all times material hereto was BEAGLE'S employer pursuant to Government Code Section 12940(j)(4) and was therefore barred from harassing its employees on the basis of sex pursuant to Government Code Section 12940(j).

28. Defendants' sexual harassment as set forth above created an abusive working environment in violation of Government Code Section 12940(j). Defendants and each of them and/or their agents/employees sexually harassed plaintiff and/or failed to take immediate and appropriate corrective action. The harassment was sufficiently pervasive and severe as to alter the conditions of employment and to create a hostile or abusive work environment. In addition, Defendants, and each of them and/or their agents/employees engaged in quid pro quo harassment.

29. As a direct and legal result of Defendants' harassment and the resulting hostile work environment, BEAGLE has suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, worry, fear, anxiety, pain and suffering, has lost income and related benefits, past and future, and medical expenses.

30. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE, thereby justifying an award to her of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

31. Wherefore, BEAGLE has been damaged as set forth below and requests relief as hereafter provided.

SECOND CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE § 12940(j)
(Disability Harassment)
Against RITE AID and DOES 11-20

32. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 31 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

1 33. FEHA explicitly prohibits any employer or any other person from harassing an
2 employee on the basis of a physical or mental disability pursuant to Government Code Section
3 12940(j). FEHA, under Government Code Section 12940 (j)(1), also provides that harassment
4 by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or
5 supervisors knows or should have known of the conduct and fails to take immediate and
6 appropriate corrective action.

7 34. Defendant, RITE AID at all times material hereto was BEAGLE'S employer
8 pursuant to Government Code Section 12940(j)(4) and was therefore barred from harassing its
9 employees on the basis of a physical or mental disability pursuant to Government Code Section
10 12940(j).

11 35. At all times during her employment with RITE AID, BEAGLE suffered from a
12 physical and/or mental disability that limited her ability to participate in major life activities,
13 including without limitation, working.

14 36. Defendants' disability harassment as set forth above created an abusive working
15 environment in violation of Government Code Section 12940(j). Defendants and each of them
16 and/or their agents/employees harassed plaintiff and/or failed to take immediate and appropriate
17 corrective action. The harassment was sufficiently pervasive and severe as to alter the conditions
18 of employment and to create a hostile or abusive work environment.

19 37. As a direct and legal result of Defendants' harassment and the resulting hostile
20 work environment, BEAGLE has suffered great mental, physical, and nervous discomfort,
21 annoyance, distress, anguish, fear, worry, anxiety, pain and suffering, has lost income and related
22 benefits, past and future, and medical expenses.

23 38. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
24 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
25 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
26 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
27 an example of Defendants, and each of them.

39. Wherefore, BEAGLE has been damaged as set forth below and requests relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE § 12940(a)
(Sex Discrimination)
Against RITE AID and DOES 21-30

40. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 39 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

41. FEHA explicitly prohibits any employer from discharging a person from employment or to discriminate against such person in compensation or in terms, conditions or privileges of employment on the basis of sex pursuant to Government Code Section 12940(a).

42. Defendant, RITE AID at all times material hereto was BEAGLE'S employer pursuant to Government Code Section 12926(d) and was therefore barred from discriminating in its employment decisions on the basis of sex pursuant to Government Code Section 12940(a).

43. At all times herein mentioned, BEAGLE was qualified for the position of a sales clerk/cashier at RITE AID.

44. Nonetheless, as set forth above, RITE AID terminated BEAGLE based upon her sex in violation of Government Code Section 12940(a).

45. As a direct and legal result of Defendants' discriminatory actions against her, BEAGLE has suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear, worry, anxiety, pain and suffering, has lost income and related benefits, past and future, and medical expenses. .

46. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE, thereby justifying an award to her of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

47. Wherefore, BEAGLE has been damaged as set forth below and requests relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE § 12940(k)
(Failure to Prevent Discrimination and Harassment)
Against RITE AID and DOES 31-40

48. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 47 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

49. FEHA, under Government Code Section 12940(k), requires an employer to "take all reasonable steps necessary to prevent discrimination and harassment from occurring."

50. Defendant, RITE AID at all times material hereto was BEAGLE'S employer pursuant to Government Code Section 12926(d), and was therefore required to prevent discrimination and harassment as set forth in Government Code Section 12940(k).

51. RITE AID knew or should have known of the hostile work environment created by Chris Young and DOES 31-40s', harassment and discrimination. Among other things, BEAGLE reported Chris Young's harassing and discriminatory conduct to Assistant Manager, Leslie Pogh and Store Manager, Leon Comerer, but was ignored, as set forth above.

52. Nonetheless, RITE AID did nothing to rectify said discrimination and harassment, and failed to take all reasonable steps to prevent harassment from occurring in violation of Government Code Section 12940(j)(1) and (k). RITE AID failed to affirmatively raise the subject of harassment, failed to express strong disapproval, failed to develop appropriate sanctions, and failed to inform employees how to raise and pursue their legal rights to be free from sexual harassment, and/or failed to sensitize all concerned. Instead, RITE AID allowed a hostile environment to develop against BEAGLE and then terminated BEAGLE.

53. As a direct and legal result of Defendants' discriminatory and harassing actions against her, BEAGLE has suffered great mental, physical, and nervous discomfort, annoyance,

1 distress, anguish, fear, worry, anxiety, pain and suffering, and lost income and related benefits,
2 past and future, and medical expenses.

3 54. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
4 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
5 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
6 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
7 an example of Defendants, and each of them.

8 55. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
9 hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE SECTION 12940(h)
(Retaliation For Opposing Discrimination And Harassment)
Against RITE AID and DOES 41-50

14 56. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 55
15 above as though fully set forth herein, except as said paragraphs are inconsistent with the
16 allegations of this cause of action.

17 57. FEHA explicitly prohibits an employer or person from discharging, expelling, or
18 otherwise discriminating against any person because the person has opposed any practices
19 forbidden under FEHA or because the person has filed a complaint, testified or assisted in any
20 proceeding under FEHA pursuant to Government Code Section 12940(h).

21 58. Defendant, RITE AID at all times material hereto was BEAGLE'S employer
22 pursuant to Government Code Section 12926(d) and was therefore barred from retaliating against
23 its employees pursuant to Government Code Section 12940(h).

24 59. At all relevant times herein and in violation of Government Code Section
25 12940(h), Defendants and each of them, and/or their agents/employees, as set forth above
26 retaliated against BEAGLE by adversely affecting BEAGLE'S employment after she
27 complained about and/or opposed harassment and discrimination on the basis of sex. As a result

1 of said opposition, BEAGLE suffered the adverse employment actions as described above,
2 including termination. There is a causal link between BEAGLE'S protected opposition to
3 harassment and discrimination and the adverse employment action in that, inter alia, the
4 retaliation commenced and/or intensified shortly after each act of opposition or complaint.

5 60. As a direct and legal result of Defendants' retaliation, BEAGLE has suffered
6 great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear, worry,
7 anxiety, pain and suffering, has lost income and related benefits, past and future, and medical
8 expenses.

9 61. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
10 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
11 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
12 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
13 an example of Defendants, and each of them.

14 62. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
15 hereafter provided.

16

17 **SIXTH CAUSE OF ACTION**
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
Against RITE AID and DOES 51-60

18 63. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 62
19 above as though fully set forth herein, except as said paragraphs are inconsistent with the
20 allegations of this cause of action.

21 64. Government Code Section 12940 and Article 1, Section 8 of the California
22 Constitution (see Eleventh Cause of Action) each embody a fundamental, substantial, and well-
23 established public policy of the State of California prohibiting any employer from discharging a
24 person from employment or from a training program leading to employment or to discriminate
25 against the person in compensation or in terms, conditions or privileges of employment on the
26 basis of sex.

65. As set forth above, Defendants violated the above fundamental public policy by discriminating against, harassing, and terminating BEAGLE on the basis of sex and/or a physical or mental disability.

66. As a direct and proximate result of Defendants' discriminatory actions against her, BEAGLE has suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear, worry, anxiety, pain and suffering, has lost income and related benefits, past and future, and medical expenses.

67. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE, thereby justifying an award to her of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

68. Wherefore, BEAGLE has been damaged as set forth below and requests relief as hereafter provided.

SEVENTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5
Against RITE AID DOES 61-70

69. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 68 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

70. Labor Code Section 1102.5 explicitly prohibits an employer from retaliating against an employee for disclosing information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

71. Defendant, RITE AID at all times material hereto was BEAGLE'S employer. Defendant, RITE AID and/or its agents/employees, as set forth above retaliated against BEAGLE by adversely affecting BEAGLE'S employment after she complained about and/or

1 opposed harassment and discrimination on the basis of sex, race and/or disability to the Stockton
2 Police Department and/or the DFEH. As a result of said report, BEAGLE suffered the adverse
3 employment action as described above, including termination. There is a causal link between
4 BEAGLE'S protected opposition to harassment and discrimination and the adverse employment
5 actions in that, *inter alia*, the retaliation commenced shortly after her report to the Stockton
6 Police Department and/or the DFEH.

7 72. As a direct and legal result of Defendants' retaliation, BEAGLE has suffered
8 great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear, worry,
9 anxiety, pain and suffering, has lost income and related benefits, past and future, and medical
10 expenses.

11 73. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
12 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
13 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
14 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
15 an example of Defendants, and each of them.

16 74. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
17 hereafter provided.

EIGHTH CAUSE OF ACTION
ASSAULT
Against RITE AID and DOES 71-80

21 75. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 74
22 above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 76. The conduct of Defendants and their agents/employees caused BEAGLE to be
25 apprehensive that Defendants would subject her to imminent batteries and/or intentional
26 invasions of her right to be free from offensive and harmful contact, and said conduct
27 demonstrated that Defendants had a present ability to subject BEAGLE to an immediate,
28 intentional, offensive and harmful touching.

1 77. The remaining Defendants and Does 71-80 ratified the above conduct by
2 condoning such acts and conduct and failing to take any appropriate action.

3 78. As a direct and legal result of Defendants' aforementioned conduct, BEAGLE has
4 suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear,
5 worry, anxiety, pain and suffering, has lost income and related benefits, past and future, and
6 medical expenses.

7 79. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
8 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
9 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
10 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
11 an example of Defendants, and each of them.

12 80. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
13 hereafter provided.

NINTH CAUSE OF ACTION
BATTERY
against RITE AID and DOES 81

17 81. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 80
18 above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 82. The conduct of Defendants and their agents/employees as described above,
21 constituted an unconsented and intentional invasion of BEAGLE'S right to be free from
22 offensive and harmful physical contact.

23 83. The remaining Defendants and Does 81-90 ratified the above conduct by
24 condoning such acts and conduct and failing to take any appropriate action.

25 84. As a direct and legal result of Defendants' aforementioned conduct, BEAGLE has
26 suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear,
27 worry, anxiety, pain and suffering, has lost income and related benefits, past and future, and
28 medical expenses.

1 85. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
2 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
3 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
4 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
5 an example of Defendants, and each of them.

6 86. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
7 hereafter provided.

TENTH CAUSE OF ACTION
SEXUAL ASSAULT & BATTERY
Against RITE AID and DOES 91-100

11 87. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 86
12 above as though fully set forth herein, except as said paragraphs are inconsistent with the
13 allegations of this cause of action.

14 88. Civil Code Section 1708.5(a) provides that a person commits a sexual battery if
15 one does any of the following "(1) Acts with the intent to cause a harmful or offensive contact
16 with an intimate part of another, and a sexually offensive contact with that person directly or
17 indirectly results. (2) Acts with the intent to cause a harmful or offensive contact with another
18 by use of his or her intimate part, and a sexually offensive contact with that person directly or
19 indirectly results. (3) Acts to cause an imminent apprehension of the conduct described in
20 paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly
21 results."

22 89. Chris Young's conduct, as set forth above constituted sexual battery in violation
23 of Civil Code Section 1708.5(a). On or about July 6, 2005, Chris Young caused harmful and
24 offensive contact with BEAGLE by shoving her head down in between his legs and in front his
25 intimate area all of the while stating, "I like you better down there," or words to that effect.

26 90. As a direct and legal result of Defendants' aforementioned conduct, BEAGLE has
27 suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear,

1 worry, anxiety, pain and suffering, wage loss, has lost income and related benefits, past and
2 future, and medical expenses.

3 91. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
4 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
5 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
6 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
7 an example of Defendants, and each of them.

8 92. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
9 hereafter provided.

10

11 **ELEVENTH**
12 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**
13 **Against RITE AID and DOES 1-10**

14

15 93. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 92
16 above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18

19 94. The conduct of Defendants, and each of them, as alleged above, was outrageous
20 and outside the normal scope of the employment relationship. Defendants, and each of them,
21 knew that their conduct would result in BEAGLE'S severe emotional distress, and said conduct
22 was perpetrated by Defendants, and each of them, with the intent to inflict, or with reckless
23 disregard of the probability of inflicting, humiliation, mental anguish, and severe emotional
24 distress upon BEAGLE. Such conduct did, in fact, result in severe emotional distress caused to
25 the BEAGLE.

26

27 95. As a direct and legal result of Defendants' aforementioned conduct, BEAGLE has
28 suffered great mental, physical, and nervous discomfort, annoyance, distress, anguish, fear,
worry, anxiety, pain and suffering, wage loss, has lost income and related benefits, past and
future, and medical expenses.

1 96. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
2 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
3 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
4 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
5 an example of Defendants, and each of them.

6 97. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
7 hereafter provided.

TWELFTH
INVASION OF PRIVACY
Against RITE AID and DOES 11-20

11 98. BEAGLE hereby realleges and incorporates by reference Paragraphs 1 through 97
12 above as though fully set forth herein, except as said paragraphs are inconsistent with the
13 allegations of this cause of action.

14 99. Article I, Section 1 of the California Constitution guarantees every California
15 citizen the right to privacy. Article I, Section 1 is applicable to private parties, including
16 individual and corporate defendants, as alleged herein. Further, California recognizes a common
17 law tort of invasion of privacy prohibiting, *inter alia*, intrusion upon seclusion, public disclosure
18 of private facts, and publication of statements placing an individual in a false light.

19 100. Plaintiff has a legally protected right of seclusion and privacy, as recognized by
20 California common law and Article I, Section 1 of the California Constitution. Defendant, RITE
21 AID intruded upon BEAGLE'S privacy when an employee in the pharmacy department
22 disclosed to other RITE AID employees the names of the medications that BEAGLE was taking
23 while she was on medical leave for the symptoms she was experiencing from the acts of
24 harassment and retaliation as alleged herein above. Plaintiff had a reasonable expectation of
25 privacy in that California and federal law, and Defendant, RITE AID'S own written policies
26 prohibited the conduct as alleged herein above. Defendant, RITE AID'S intrusions were highly

1 offensive to a reasonable person, and were highly offensive to Plaintiff. Defendant, RITE AID'S
2 conduct constitutes an invasion of privacy.

3 101. Defendant, RITE AID is liable for its employee's acts under the principle of
4 respondeat superior insofar as Defendant, RITE AID ratified its employees conduct by, inter alia,
5 failing to discipline its employees or otherwise punish his or her actions or deter future conduct
6 by him or her and by retaliating against BEAGLE for opposing the employee's conduct, as
7 described herein above.

8 102. The above alleged intrusions on BEAGLE'S expectation of privacy is unjustified
9 because, among other things, it does not substantially further any compelling, legitimate interest
10 of Defendants and was, in fact, used to punish and retaliate against BEAGLE for her opposition
11 to harassment and her participation in Defendant, RITE AID'S legally mandated "investigation."

12 103. As a proximate result of the wrongful acts of Defendants, and each of them,
13 BEAGLE has suffered and continues to suffer great mental, physical, and nervous discomfort,
14 annoyance, distress, anguish, fear, worry, anxiety, pain and suffering, wage loss, has lost income
15 and related benefits, past and future, and medical expenses.

16 104. The acts taken toward BEAGLE were carried out by and/or ratified by Defendants
17 and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent,
18 malicious, deliberate, egregious, and inexcusable manner in order to injure or damage BEAGLE,
19 thereby justifying an award to her of punitive damages in a sum appropriate to punish and make
20 an example of Defendants, and each of them.

21 105. Wherefore, BEAGLE has been damaged as set forth below and requests relief as
22 hereafter provided.

23 **DEMAND FOR JURY TRIAL**

24 98. Plaintiff hereby demands a jury trial.

25 ///

26 ///

27 ///

28

PRAYER FOR RELIEF

WHEREFORE, BEAGLE prays judgment against Defendants as follows:

1. For compensatory and general damages, including lost wages and related benefits, and medical expenses in an amount according to proof, but in excess of the minimum jurisdictional limit of this Court;
2. For punitive and/or exemplary damages;
3. For statutory attorneys' fees and costs, including those available under Government Code Section 12965(b);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, according to proof;
5. For costs of suit;
6. For such other and further relief as the court deems proper.

DATED: March 7, 2008

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By W. D. Adams

MARK S. ADAMS

PROOF OF SERVICE

Kimberly Beagle v. Rite Aid Corporation, and DOES 1 to 100, inclusive
USDC Northern District Case No.: CV08-1517-PJH

I, MARIA E. JAIME, declare:

I am employed in the City and County of San Francisco, State of California. My business address is 44 Montgomery Street, Suite 2500, San Francisco, California 94104. I am over the age of 18 years and not a party to the foregoing action.

On April 24, 2008, I served the following Document: **DEFENDANT RITE AID'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (FRCP 12(b)(1)** on the interested parties in said action,

Mark S. Adams, Esq. (209) 477-3833
David D. Cheng, Esq.
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Blvd., Second floor
Stockton, CA 95207-8253
Attorneys for Plaintiff

X **(by mail)** by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above. At Kelly, Herlihy & Klein LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of San Francisco, California.

— **(by personal delivery)** by having a true copy thereof personally delivered to the person listed above by a non-interested party employed by the law firm of Kelly, Herlihy & Klein LLP.

— **(by Federal Express)** by depositing a true copy thereof in a sealed packet for overnight delivery, with charges thereon fully prepaid, in a Federal Express collection box, at San Francisco, California, and addressed as set forth above.

— **(by facsimile transmission as indicated above)** by transmitting said document(s) from our office facsimile machine (415) 391-7808, to facsimile machine number(s) shown above. Following transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct and that this declaration was executed on *April 24, 2008* at San Francisco, California.

MARIA E. JAIME